

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in the Board Room, York Hall, Yorktown, Virginia, on the ____ day of ____, 2002:

Present

Vote

Donald E. Wiggins, Chairman
Walter C. Zaremba, Vice Chairman
Sheila S. Noll
James S. Burgett
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following ordinance was adopted:

AN ORDINANCE TO AMEND CHAPTER 10, EROSION AND SEDIMENT CONTROL, YORK COUNTY CODE, ADOPTING THE COMMONWEALTH OF VIRGINIA EROSION AND SEDIMENT HANDBOOK AND STATE REGULATIONS

BE IT ORDAINED by the York County Board of Supervisors this the _ day of _____, 2002, that Chapter 10, Erosion and Sediment Control, York County Code, be and it is hereby amended to read and provide as follows:

ARTICLE I. IN GENERAL

Sec. 10-1. Purpose of chapter.

It is the purpose of this chapter to prevent degradation of properties, stream channels, waters and other natural resources of the county by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.~~provide for safeguards for life, property, general environment and the public welfare by establishing minimum standards and procedures for the enforcement and administration of standards for land disturbing activities in order to prevent undue harm caused by erosion and sediment deposits caused by such activities. To this purpose, it is the intent of the regulations prescribed by this chapter to protect natural vegetation from needless disturbance; to ensure that waterborne sedimentation is not deposited on public or private property to the detriment of such property; and to ensure that drainage facilities or impoundments, natural or manmade, are not reduced or damaged by siltation.~~

This chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (10.1-560 et seq.), known as the Erosion and Sediment Control Law.

Sec. 10-2. Definitions.

For the purpose of this chapter, the following words and terms shall have the meanings ascribed to them in this section:

Agreement in lieu of a plan. A contract between the plan-approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family detached dwelling; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

~~*Adequate channel.* A watercourse that will convey a chosen frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections of the same.~~

Applicant. Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

~~*Arborist.* An individual trained in arboriculture, forestry, landscape architecture, horticulture, or related fields and experienced in the conservation and preservation of native and ornamental trees. This definition shall also incorporate the term "urban forester."~~

~~*Caliper.* The diameter of a tree trunk measured six inches (6") above ground level for nursery stock and four and one-half feet (4½') above ground level for naturally occurring existing trees.~~

~~*Channel.* A natural stream or manmade watercourse.~~

Certified inspector. An employee or agent of the County who has been designated as such by the county administrator. A certified inspector shall (i) hold a certificate of competence from the Virginia Soil And Water Conservation Board in the area of project inspection or (ii) be enrolled in the Virginia Soil and Water Conservation Board's training program for project inspection and successfully complete such program within one year after enrollment.

Certified plan reviewer. A County employee or agent who has been designated as such by the county administrator. A certified plan reviewer shall (i) hold a certificate of competence from the Virginia Soil and Water Conservation Board in the area of plan review, (ii) be enrolled in the Virginia Soil and Water Conservation Board's training program for plan review and successfully complete such program within one year after enrollment, or (iii) be licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to article 1 (Sec 54.1-400 et seq.) of chapter 4 of title 54.1 of the Code of Virginia, as it may be amended from time to time.

Certified program administrator. A County employee or agent designated as such by the county administrator. A certified program administrator shall (i) hold a certificate of

competence from the Virginia Soil and Water Conservation Board in the area of program administration or (ii) be enrolled in the Virginia Soil and Water Conservation Board's training program for program administration and successfully complete such program within one year after enrollment.

Clearing. Any activity which removes the vegetative ground cover including, but not limited to, root mat removal or topsoil removal.

Code of Virginia. All references herein to the Code of Virginia are to the Code of Virginia (1950), as it may be amended from time to time.

Conservation plan, erosion and sediment control plan, or plan. A document ~~describing a proposed or approved process~~containing material for the conservation of soil and water resources of a unit or group of units of land. It may include~~containing~~ appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretation and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the ~~intended~~ conservation objectives ~~of this chapter~~.

County. The County of York.

County Administrator. The county administrator for York County, or his designee.

~~Cut.~~ A portion of land surface or area from which earth has been or will be removed by excavation.

~~Dam.~~ A barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

Department. The Virginia Department of Conservation and Recreation.

~~Development.~~ A tract of land developed or to be developed or redeveloped as a single unit under single ownership or unified control.

~~Dike.~~ An embankment to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

Director. The director of the Virginia Department of Conservation and Recreation.

District or soil and water conservation district. Refers to the Colonial Soil and Water District.

~~Diversion.~~ A channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

Erosion Impact area. -An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of

10,000 square feet ~~one (1) acre~~ or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

Excavating. Any digging, scooping or other methods of removing earth materials.

Filling. Any depositing or stockpiling of earth materials.

Fill. The portion of land surface or area into which sand, gravel, earth or other materials are deposited to raise the elevation above the natural grade.

Forest management plan. A written plan for the operation of a forest or woodland property utilizing accepted professional forestry principles which records data and prescribes measures designed to provide for the optimum use of all forest resources.

Forestry. The development and/or maintenance of a forest or woodland area under a forest management plan. Included are establishments engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or other silvicultural activities.

Grading. Any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

Land-disturbing activity. Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, ~~within the state,~~ including, but not limited to clearing, grading, excavating, transporting and filling of land except that the term shall not include:-

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to the construction of the building to be served by the septic tank system;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and gas, including the well site, roads, feeder lines and off-site disposal areas;
- (7) Tilling, planting or harvesting of agricultural, horticultural or forest crops or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches,

strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 of Title 10.1 of the Code of Virginia (Sec 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia Sec 10.1-1163(B);

- (8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Virginia Dam Safety Act (Article 2 of Chapter 6 of Title 10.1, Code of Virginia, Sec. 10.1-604 et seq.) ditches, strip cropping, lister furrowing, contour cultivation, contour furrowing, land drainage and land irrigation;
- (10) Disturbed land areas of less than two thousand five hundred (2,500) square feet in size;
- (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (12) Shore erosion control projects on tidal waters when the projects are approved by the County Wetlands Board, the Virginia Marine Resources Commission or the United States Army Corps of Engineers;
- (13) Emergency work to protect life, limb or property, and emergency repairs; provided that if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan approving authority.

Land-disturbing permit. A permit issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof for any purpose set forth herein.

Local erosion and sediment control program or local control program. All of the various methods employed by the County to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program, which may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

Minimum Standards. Those Minimum Standards contained within the Erosion and Sediment Control Regulations promulgated by the Virginia Soil and Water Conservation Board, as set out in 4VAC50-30-40 of the Virginia Administrative Code as they may be amended from time to time.

~~Owner.~~ The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

~~Main-line utilities.~~ Within each type of utility system, the principal artery or arteries of the system to which individual lots or buildings may be connected by laterals.

~~Permittee.~~ The person to whom a permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Person. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, co-operative, county, city, town, or any other political subdivision of the state, any interstate body, or any other legal entity.

~~Plan-approving authority.~~ The county administrator or his designee who is responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

~~Program authority.~~ The County, which has adopted a soil erosion and sediment control program approved by the Virginia Soil and Water Conservation Board.

~~Post-development.~~ Conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

~~Pre-development.~~ Conditions at the time the erosion and sediment control plan is submitted to the county administrator. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

~~Project limits.~~ The boundary which encompasses areas where development activities are proposed, including storage areas for equipment and materials, construction personnel parking areas and any other area where facilities associated with the development activities will be located.

~~Rainfall distribution.~~ The variation of the intensity of rainfall over a specific storm duration. Acceptable rainfall distributions shall include USDA Soil Conservation Service 24-hour type II distributions, estimated maximum rainfall for the estimated time of concentration based on the Norfolk, Virginia NWS HYDRO-35 Intensity Duration Frequency Curves, or recorded rainfall data as approved by the county administrator.

~~Significant land disturbing activity.~~ Any activity that will result in the disturbance of one (1) acre or more of area.

~~Regulations.~~ All regulations promulgated by any local, state, or federal governmental agency having oversight and authority over the control of erosion and sedimentation

resulting from land-disturbing activities, including (without limitation) the Erosion and Sediment Control Regulations and the Virginia Erosion and Sediment Control Handbook promulgated by the Virginia Soil and Water Conservation Board, as they may be amended from time to time.

Responsible Land Disturber. An individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Virginia Soil and Water Conservation Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of chapter 4 of title 54.1 of the Code of Virginia, as it may be amended from time to time.

Single-family detached dwelling. A noncommercial one-family dwelling unit which is surrounded on all sides by yards or other open space located on the same lot and which is not attached to any other dwelling by any means. For purposes of the definition of a “single-family detached dwelling”, the term “family” shall have the same meaning as is defined in the York County zoning ordinance, Chapter 24.1 of this Code.

~~*Stabilized.*—An area that can be expected to withstand normal exposure to atmospheric conditions without incurring erosion damage.~~

State erosion and sediment control program or state program. The program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, including regulations designed to minimize erosion and sedimentation.

State waters. All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

Transporting. Any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

~~*Stormwater detention/retention.*—The process of temporarily impounding runoff and releasing such runoff at a controlled rate of flow in order to reduce flooding and erosion. Detention facilities are normally dry during nonrainfall periods, whereas retention facilities maintain a permanent impoundment and are normally wet during nonrainfall periods.~~

~~*Subdivision.* A division of property into two (2) or more lots where such division has been established in accordance with the provisions of the county Subdivision ordinance.~~

~~*Ten-year frequency storm.*—A storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten (10) years. It may also be expressed as~~

~~an exceedence probability with a ten percent (10%) chance of being equaled or exceeded in any given year.~~

~~*Tree.* A woody perennial plant generally with one main stem or trunk, but including multiple stemmed plants, which develops many branches, generally at some height above the ground. For the purposes of meeting the landscaping and preservation requirements of this chapter, trees shall be defined as follows:~~

- ~~(a) — *Deciduous tree.* Any shade or flowering/ornamental tree that sheds its foliage during a particular season.~~
- ~~(b) — *Evergreen (or coniferous) tree.* Any tree that retains its green foliage year round.~~
- ~~(c) — *Heritage tree.* Any tree that has been designated by ordinance of the board of supervisors as having notable historic or cultural significance to any site or which has been so designated in accordance with an ordinance adopted pursuant to section 15.1-503.2, Code of Virginia.~~
- ~~(d) — *Mature tree.* Any deciduous or coniferous tree with a minimum diameter (caliper) of fourteen inches (14") when measured four and one half feet (4½') above ground level.~~
- ~~(e) — *Memorial tree.* Any tree that has been designated by ordinance of the board of supervisors to be a special commemorating memorial.~~
- ~~(f) — *Significant tree.* Any deciduous or coniferous tree with a minimum diameter (caliper) of twenty two inches (22") when measured four and one half feet (4½') above ground level.~~
- ~~(g) — *Specimen tree.* Any tree that has been designated by ordinance of the board of supervisors to be notable by virtue of its outstanding size and quality for its particular species.~~

~~*Two-year frequency storm.* A storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two (2) years. It may also be expressed as an exceedence probability with a fifty percent (50%) chance of being equaled or exceeded in any given year.~~

~~*Watershed.* The area that drains to a specific stormwater conveyance system; also known as the drainage area. Contributing watershed shall mean the portion of the watershed that contributes runoff to the point of analysis in the drainage system.~~

~~*Woodland.* A tract of land dominated by trees, but usually also containing woody shrubs, grasses, and other vegetation. For purposes of this chapter, the term woodland shall incorporate woods, woodland areas, wooded areas, forest, forested areas and any other terminology commonly recognized to have the same meaning.~~

Sec. 10-3. Local erosion and sediment control program.~~Administration and enforcement of chapter.~~

- (a) Pursuant to section 10.1-562 of the Code of Virginia, the County hereby adopts the regulations, references, guidelines, standards and specifications (hereinafter “the Virginia Erosion and Sediment Control Regulations”) and the Virginia Erosion and Sediment Control Handbook (“the Handbook”) promulgated by the Virginia Soil and Water Conservation Board, as such may be amended from time to time, for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. The Virginia Erosion and Sediment Control Regulations and the Handbook are sometimes referred to hereinafter as “the state program”.
- (b) Before adopting regulations which are more stringent than the state program, the County shall give due notice and conduct a public hearing on the proposed or revised regulations. No public hearing shall be required when the County is amending the local control program to conform to revisions in the state program.
- (c) Pursuant to section 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector.
- (ad) The county administrator is hereby designated as the eCounty's agent for the purpose of administering and enforcing the terms of this chapter. The agent is authorized to ~~and shall~~ make such inspections as may be necessary to ensure compliance with the terms of this chapter, and any conditions of approval for specific projects and is authorized to take such steps as are provided by this chapter, and as may be necessary, to ensure compliance with its terms.
- (be) The county administrator is hereby designated as the plan approving authority for the purpose of this chapter and is authorized, on behalf of the county, to review and approve applications for permits under the terms of this chapter.
- (f) The County's Erosion and Sediment Control Program shall employ or retain one or more certified program administrators, one or more certified plan reviewers, and one or more certified inspectors. A single individual may be designated to perform more than one of such functions provided that the individual possesses the requisite qualifications.
- (g) The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the County's Department of Environmental and Development Services.

Sec. 10-4. Application of chapter—Generally.~~Conflicting requirements.~~

Any activity involving a land change that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including but not

~~limited to clearing, grading, excavating, transporting, and filling of lands, and not otherwise specifically exempted by this article shall be regulated by this chapter and subject to the conditions contained herein.~~

- ~~(a) The terms, conditions and provisions of this chapter shall in no way alter, diminish or change the terms, conditions or provisions of any other ordinance of the county.~~
- ~~(b) In the case of any conflict between any term, condition or provision of this chapter with any term, condition or provision of any other ordinance, the more restrictive term, condition or provision shall prevail.~~
- ~~(c) In the case of any conflict between any term, condition or provision of this chapter with any other term, condition or provision contained elsewhere in this chapter, the more restrictive term, condition or provision shall prevail.~~

~~**Sec. 10-5. Exemptions from chapter.**~~

~~The following specific uses and activities shall be exempt from the terms of this chapter:~~

- ~~(a) Such minor land-disturbing activities as home gardens and individual home landscaping, repairs and maintenance work;~~
- ~~(b) Individual service connections for utilities;~~
- ~~(c) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk, provided such land-disturbing activity is confined to the area of the road, street or sidewalk that is hard surfaced;~~
- ~~(e) Septic tank lines or drainage fields that will result in the disturbance of less than two thousand five hundred (2,500) square feet unless included in an overall plan for land-disturbing activities relating to the construction of the building to be served by the septic tank system;~~
- ~~(f) Surface or deep mining;~~
- ~~(g) Exploration or drilling for oil and gas, including the well site, roads, feeder lines, and off-site disposal areas;~~
- ~~(h) Tilling, planting or harvesting of agricultural, horticultural or forest crops; forestry where a forest management plan has been prepared and/or approved by the Virginia Department of Forestry and all operations are in accordance with the approved plan or livestock feedlot operations; including engineering operations as follows: con-~~

~~struction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, land drainage and land irrigation;~~

- ~~(i) — Repair or rebuilding of the tracks, right of way, bridges, communication facilities and other related structures and facilities of a railroad company;~~
- ~~(j) — Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (section 62.1-115.1 et seq., Code of Virginia), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;~~
- ~~(k) — Land disturbances of less than two thousand five hundred (2,500) square feet in size;~~
- ~~(l) — Installation of fence and sign posts or telephone and electrical poles and other kinds of posts or poles;~~
- ~~(m) — Shore erosion control projects on tidal waters when the projects are approved by the wetlands board, the Marine Resources Commission or the United States Army Corps of Engineers;~~
- ~~(n) — Emergency work to protect life, limb or property and emergency repairs; provided that, if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the county administrator.~~

Sec. 10-6. — Conflicting requirements.

- ~~(a) — The terms, conditions and provisions of this chapter shall in no way alter, diminish or change the terms, conditions or provisions of any other ordinance of the county.~~
- ~~(b) — In the case of any conflict between any term, condition or provision of this chapter with any term, condition or provision of any other ordinance, the more restrictive term, condition or provision shall prevail.~~
- ~~(c) — In the case of any conflict between any term, condition or provision of this chapter with any other term, condition or provision contained elsewhere in this chapter, the more restrictive term, condition or provision shall prevail.~~

Secs. 10-~~75~~—10-10. Reserved.

ARTICLE II. PLANS, PERMITS, STANDARDS AND INSPECTIONS

Sec. 10-11. Regulated land-disturbing activities; contents, submission and approval of plans

- (a) Except as provided herein, no person may engage in any land-disturbing activity until he has submitted to the County Department of Environmental and Development Services an erosion and sediment control plan ("plan") for the land-disturbing activity and such plan has been approved by the plan-approving authority.

Where land-disturbing activities involve lands under the jurisdiction of more than one local erosion and sediment control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Virginia Soil and Water Conservation Board for review and approval rather than to each jurisdiction concerned.

Where the land-disturbing activity results from the construction of a single-family detached dwelling, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

- (b) The standards contained within the Virginia Erosion and Sediment Control Regulations and the Virginia Erosion and Sediment Control Handbook are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by these same standards, regulations and guidelines. When the standards vary between the publications, the Virginia Erosion and Sediment Control Regulations shall take precedence. In addition to the above standards, the following requirements shall be met for plan submissions:

- (1) A minimum of four copies of the erosion and sediment control plan shall be submitted for review and approval.
- (2) Plan sheet size shall be 24 inches by 36 inches.
- (3) Plans shall be prepared to an appropriate engineer's scale and the scale shall be shown on the plan. Scale shall be no smaller than one inch equal to 100 feet.
- (4) The name of the project, the developer, the owner of the property and the name, address, and telephone number of the person or firm preparing the plan shall be listed on the plan.
- (5) The location and extent of any transitional buffers, infiltration yards, environmental management areas (includes Chesapeake Bay preservation areas), floodplain management areas, historic resources management areas, tourist

corridor management areas or watershed management and protection areas that may be required by the application of chapter 24.1 (zoning ordinance) of this code shall be shown on the plan.

- (6) The location, type, extent, owner's name and recordation information of any existing or proposed landscape, conservation, preservation, drainage, utility, ingress/egress or similar easements on the subject property or adjoining the property shall be shown on the plan.
- (7) Trees proposed for preservation, their approximate drip line and the location, type and extent of tree protection devices and measures to assure preservation during clearing and subsequent development activity shall be shown on the plan.
- (8) The sequence of construction outlining the installation and removal of erosion and sediment control measures in relationship to the development of the site shall be on the plan.
- (9) An itemized cost estimate detailing the expected total construction costs of all erosion and sediment control measures associated with the plan shall be prepared and submitted along with the plan.
- (10) Consistent with Code of Virginia section 10.1-563(B), as a prerequisite to approval of an application, the person responsible for implementing the erosion and sediment control plan shall provide the name of a Responsible Land Disturber, who will be in charge of and responsible for carrying out the land disturbing activity in accordance with the approved plan.
- (c) The plan-approving authority shall, within 45 days, approve any such plan, if it is determined that the plan meets the requirements of the local control program, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this ordinance.
- (d) The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval.

When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- (e) An approved plan may be changed by the plan-approving authority when:

 - (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations;

or

- (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.
- (f) When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.
- (g) Consistent with Code of Virginia section 10.1-563(D), electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies or railroad companies shall file general erosion and sediment control specifications annually with the Virginia Soil and Water Conservation Board for review and approval. The specifications shall apply to:
- (1) Construction, installation and maintenance of electric, natural gas and telephone utility lines and pipelines; and
- (2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.
- Individual County approval of separate projects as described in (1) and (2), above, shall not be required provided that Virginia Soil and Water Conservation Board approved specifications are followed. Projects not described in (1) and (2) above shall comply with the requirements of this ordinance.
- (h) State agency projects are exempt from the provisions of this chapter except as provided for in the Code of Virginia, section 10.1-564.

Sec. 10-11Sec. 10-12. Required permits.

- ~~(a) No person shall engage in any regulated land-disturbing activity until he has submitted to the county administrator an erosion and sediment control plan for such land-disturbing activity, and such plan has been approved as in compliance with the intent and requirements contained in this chapter, and a permit certifying such approval has been issued in accordance with this article.~~
- ~~(b) No agency, department or officer authorized under any other ordinance or law to issue grading, building or other required permits for projects involving land-disturbing activities shall issue such permits, unless the permit required by this section has been issued, and the county administrator has conducted an initial erosion and sediment control inspection of the project, found such project to be in compliance with the approved erosion and sediment control plan for the project and issued an approval notification for the initial erosion and sediment control inspection.~~

- (a) No person may engage in any land-disturbing activity, nor shall any building permit be issued by the County's building official, until such person shall have acquired a land-disturbing permit and have paid the fees and executed a secured performance agreement, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance.
- (eb) The county administrator may require the owner of property which has been designated by the county administrator as an erosion impact area to prepare and submit an erosion and sediment control plan, ~~in accordance with section 10-14~~, for review and approval; and upon approval of the erosion and sediment control plan for the erosion impact area, the county administrator may require the owner of the property to obtain a land-disturbing activity permit, and to fully implement the approved plan.
- (c) No permit which authorizes land-disturbing activities shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

Sec. 10-12. Preparation and submission of plans.

- ~~(a) Any person proposing to undertake any land-disturbing activity, other than those exempted by section 10-5, shall prepare and submit to the county administrator an erosion and sediment control plan, prepared in accordance with section 10-14 and section 10-15, indicating the type, magnitude and location of the activity, anticipated conservation problems and proposed methods of ensuring compliance with this chapter. The above provision notwithstanding, any person proposing to undertake any land-disturbing activity associated with the construction of a single-family detached residence that is subject to the terms of this chapter, shall comply with the plan submission and permitting provisions of section 10-21 of this chapter.~~
- ~~(b) It is recommended that persons proposing a significant land-disturbing activity submit to the county administrator, for informal review and comment, a preliminary plan showing the general extent and implication of such activity. Preliminary plans should be drawn at a scale of not less than one inch equals two hundred feet (1" = 200') on a topographical map with a contour interval of not greater than five feet (5'), and should show the boundary of the proposed project, the name and location of all adjacent streets and easements and all drainage facilities, including affected off-site facilities. The plan should describe, in general, the nature of the proposed project and conservation methods and should include a quantified statement of impact involving, among other things, areas of lands, and volume and velocities of storm water runoff.~~

Sec. 10-13. Plan review and inspection fee.

Any request for review and approval of an erosion and sediment control plan shall be accompanied by the payment of a plan review and inspection fee. Such fee shall be in the amount fixed, and as may be thereafter changed from time to time, by resolution adopted by the board of supervisors.

Sec. 10-14. Number of copies and contents of plan.

~~The following shall be required for any project requiring a land-disturbing activity permit under the provisions of this chapter, other than projects specifically excluded from the requirements of this subsection in accordance with section 10-21(a) of this chapter:~~

~~(a) Four (4) copies of the erosion and sediment control plan required in section 10-12(a) shall be submitted to the county administrator for formal review and approval. Such plan shall consist of:~~

~~(1) A narrative report as described in subsection (b) below with plan details as may be necessary to describe the project and give the purposes, schedule or phasing of major construction activities and a schedule of applications of control methods, and~~

~~(2) A map or maps as described in subsections (c) and (d) below depicting the topography of the area, the existing trees, the limits for clearing and grading, other proposed alterations of the area and the location of control measures and facilities.~~

~~(b) The narrative report of the plan shall include, but not be limited to:~~

~~(1) A general description of the project.~~

~~(2) A hydrologic and hydraulic analysis of the project site and the contributing watershed, calculated and prepared in accordance with the following guidelines:~~

~~a. The analysis shall verify the adequacy of all channels and pipes within the project boundaries, all channels and pipes which will convey runoff from the project and all channels and pipes which may be impacted by the project's development.~~

~~b. The hydrologic and hydraulic analysis shall be verified by calculations that are consistent with good engineering practices and methods that are acceptable to the county administrator.~~

~~c. Design storms shall be defined as either:~~

~~1. a 24 hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service when using U.S. Soil Conservation methods; or~~

~~2. the estimated maximum rainfall for the estimated time of concentration of runoff at the point of analysis, when using a design method such as the Rational Method.~~

- d. ~~The Rational Method shall be acceptable for determining peak runoff rates from contributing drainage areas of less than one hundred (100) acres where storm drainage system hydrographs are not required by the county administrator and where the calculated peak runoff rate will be used to determine channel or pipe adequacy.~~
- e. ~~The above provision notwithstanding, the rational method shall not be used to size stormwater management facility outlet devices or to develop stormwater management facility inflow/outflow hydrographs unless specific hydrologic conditions exist which warrant the use of the rational method and the applicant submits sufficient supporting documentation to the county administrator which provides evidence of the validity of the rational method for the site specific application. The county administrator shall review the supporting documentation and render a decision as to the acceptability of the rational method for sizing stormwater management facility outlet devices and the development of stormwater management facility inflow/outflow hydrographs on a case by case basis.~~
- f. ~~Pre-development condition hydrologic analyses shall be based on the existing watershed characteristics in conjunction with existing project site characteristics with assumed good hydrologic runoff parameters at the time of analysis.~~
- g. ~~Post-development condition hydrologic analyses shall be based on the existing watershed characteristics in conjunction with the ultimate development characteristics of the project site.~~
- (3) ~~Documentation that verifies that properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria:~~
 - a. ~~Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or manmade receiving channel, pipe or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.~~
 - b. ~~Adequacy of all channels and pipes shall be verified in the following manner:~~
 - 1. ~~The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is one hundred (100) times greater than the contributing drainage area of the project site.~~

- ~~2. Natural channels shall be analyzed by the use of a two-year frequency storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks.~~
 - ~~3. All previously constructed manmade channels shall be analyzed by the use of a ten-year frequency storm to verify that stormwater will not overtop its banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks.~~
 - ~~4. Pipes and storm sewer systems shall be analyzed by the use of a ten-year frequency storm to verify that stormwater will be contained within the pipe or system.~~
- ~~c. If existing natural receiving channels or previously constructed man-made channels or pipes are not adequate, the applicant shall:~~
- ~~1. Improve the channels to a condition where a ten-year frequency storm will not overtop the banks and a two-year frequency storm will not cause erosion to the channel bed or banks; or~~
 - ~~2. Improve the pipe or pipe system to a condition where the ten-year frequency storm is contained within the appurtenances; or~~
 - ~~3. Develop a site design and stormwater management plan for the project so that from the site at the point of outfall into the receiving channel, the post development peak runoff rate from a two-year and a ten-year storm, considered individually, shall not exceed the pre-development rates; or~~
 - ~~4. Provide a combination of channel improvement, stormwater detention/retention or other measures that are satisfactory to the county administrator to prevent downstream erosion.~~
- ~~(4) The proposed stormwater management program:~~
- ~~a. If the applicant chooses a stormwater management program that includes a stormwater detention/retention facility, the plan shall set forth the maintenance requirements of the facility and identify the person responsible for performing the maintenance.~~
 - ~~b. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented. Evidence of permission to construct improvements, including the recording of all required easements, shall be presented before the issuance of any land disturbing activity permit.~~

- ~~c. — Impounding structures that are not covered by the Virginia Dam Safety Regulations shall be checked for structural integrity and floodplain impacts for the 100-year storm event.~~
 - ~~d. — Outflows from a stormwater management facility shall be discharged to an adequate channel, or velocity dissipators shall be placed at the outfall of all detention and retention facilities and along the length of any outfall channel as necessary to provide a non-erosive velocity of flow from the facility to a channel.~~
 - ~~e. — Increased volumes of sheet flows that may cause erosion or sedimentation on adjacent property shall be diverted to a stable outlet, adequate channel or stormwater management.~~
 - ~~f. — In applying the stormwater management criteria, individual lots in a subdivision development shall not be considered to be separate development projects. Instead, the subdivision development, as a whole, shall be considered to be a single development project. Hydrologic parameters that reflect the ultimate subdivision development shall be used in all engineering calculations.~~
- ~~(5) — The phasing or staging of land-disturbing activities.~~
 - ~~(6) — Temporary erosion and sediment control methods to be utilized during construction.~~
 - ~~(7) — Permanent erosion and sediment control methods, unless adequately described on the map.~~
 - ~~(8) — Maintenance program for erosion and sediment control facilities. The maintenance program shall describe the maintenance responsibilities of the permittee and include appropriate guarantees, acceptable to the county administrator, that all erosion and sediment control structures and systems shall be properly maintained, inspected and repaired as needed to ensure continued performance of their intended function.~~
- ~~(c) — The format of maps shall include:
 - ~~(1) — Scale of 1" = 100' or greater, such as 1" = 50', 1" = 40', etc.~~
 - ~~(2) — Topography of the project area, with a two foot (2') contour interval.~~
 - ~~(3) — North point, scale and location map.~~
 - ~~(4) — Names of the project, the developer and the person preparing the plan.~~~~
 - ~~(d) — The maps forming a part of the plan shall show:~~

~~(1) — The location of the project area and features of the site including:~~

- ~~a. — Location of landmarks, such as streets, roads, streams or drainageways and easements.~~
- ~~b. — Critical environmental areas, such as streams, lakes, ponds and wetlands.~~
- ~~c. — Nature and extent of existing vegetation including the location and identification by size and common name of all single and small groupings of all heritage, mature, memorial, significant and specimen trees in open areas within the project limits. In wooded areas within the project limits, the woodline before site preparation, average size, density and predominant species of trees shall be shown, except that all heritage, memorial and specimen trees shall be individually located and identified.~~
- ~~d. — Location and extent of any transitional buffers, infiltration yards, or any perimeter buffers that may be required by the application of chapter 24.1 (zoning ordinance) of this Code. In addition, the location, extent and recordation information of any landscape, conservation, preservation or similar easements on the subject property or adjoining the property shall be shown on the plan.~~
- ~~e. — Project limits~~

~~(2) — Proposed alterations to the area, including:~~

- ~~a. — Limits of clearing and grading.~~
- ~~b. — Areas of cuts and fills.~~
- ~~c. — Roads, buildings, ponds and other structures.~~
- ~~d. — Storm water management facilities, both on-site and off-site.~~
- ~~e. — Easements for storm water management, both on-site and off-site~~
- ~~f. — Trees proposed for preservation, their approximate dripline and the location, type and extent of tree protection devices and measures to assure preservation during clearing and subsequent development activity.~~

~~Sec. 10-15. Standards for land-disturbing activities and control practices.~~

- ~~(a) — Land-disturbing activities regulated and approved under the requirements of this chapter shall be so designed and conducted in a manner that will ensure a minimum of disturbance of the natural environment and vegetation and, in a manner that will~~

~~prevent indiscriminate or excessive clearing of trees or undue damage caused by erosion or sedimentation. Indigenous vegetation shall be preserved to the maximum extent possible consistent with the use and development allowed.~~

- ~~(b) Methods of controlling erosion and sedimentation shall, at a minimum, be in compliance with the standards prescribed in part III of the Virginia Erosion and Sediment Control Handbook, 2nd edition, 1980, or as it may be amended from time to time, which is hereby adopted by reference and made part of this section. Alternate methods may be approved when it is shown that such alternate methods provide equal or improved erosion and sedimentation control or that the alternate method will result in a net benefit to the natural environment.~~
- ~~(c) General criteria, standards and specifications for controlling erosion and sedimentation shall, at a minimum, be in compliance with the Erosion and Sediment Control Regulations, VR 625-02-00., effective September 13, 1990, and as amended thereafter from time to time by the Virginia Soil and Water Conservation Board. sections 1.5, 1.7 and 1.10 of the regulations are hereby adopted by reference and made part of this chapter and shall apply to all land disturbing activities.~~

Sec. 10-16. Approval, disapproval or modification of plans and variances.

- ~~(a) Upon receipt of a formal written application for approval of a land disturbing activity, including all required plans and fees, the county administrator shall initiate a review of the proposed project for compliance with the standards prescribed in this chapter. The county administrator shall, within forty-five (45) days of receipt of a formal application, either approve or disapprove the application in writing. The letter of approval shall set forth the amount of the surety that will be required pursuant to section 10-17 and any conditions of approval. Disapproval shall include the reasons therefor and modifications that would be required for approval. Plans not acted upon within forty-five (45) days by the county administrator are automatically approved.~~
- ~~(b) The county administrator may require and/or approve changes to an approved plan in the following cases:
 - ~~(1) Where inspection has revealed the inadequacy of the plan to satisfy applicable regulations; or~~
 - ~~(2) Where the person responsible for carrying out the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the county administrator and the person responsible for carrying out the plan.~~~~
- ~~(c) The county administrator may waive or modify any of the regulations that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:~~

- ~~(1) — At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances that are allowed by the county administrator shall be documented in the plan.~~
- ~~(2) — During construction, the person responsible for implementing the approved plan may request a variance in writing from the county administrator. The county administrator shall respond in writing either approving or disapproving such a request. If the county administrator does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.~~
- ~~(3) — The county administrator shall consider variance requests judiciously keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.~~

~~Sec. 10-17~~Sec. 10-14. Issuance of permit and surety requirements.

- (a) No permit for activities approved under this chapter shall be issued until the applicant has executed a performance agreement secured by a cash escrow, letter of credit, or any combination thereof, or other suitable legal arrangement, in a form approved by the county attorney. Such cash escrow or letter of credit shall be in an amount acceptable ~~to be determined by~~ the county administrator and shall be sufficient to ensure that measures may be taken by the county, at the applicant's expense, should he fail, after proper notice and within the time specified, to establish and maintain appropriate conservation measures ~~action which may be required of him by the approved plan~~ as a result of his land-disturbing activities. The amount of the security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the county to take such conservation action, the county may collect from the applicant any costs in excess of the amount of the surety held. ~~Should the county take such conservation action upon such failure by the applicant, the county may collect from the applicant the difference should the amount of the reasonable cost of such conservation action exceed the amount of the security held.~~ Nothing shall prevent the county from exercising such authority to prevent or remedy damages to other property, public or private, caused by an applicant's regulated activities. The county administrator may waive the requirement for surety if the surety amount is determined to be less than one thousand dollars (\$1,000.00) and the land-disturbing activity is associated with the preparation for a single-family detached dwelling residence.
- ~~(b) — No land disturbing activity permit shall be issued until the applicant has satisfactorily complied with any preconstruction condition established by the county administrator.~~

~~(e)(b)~~ Within sixty (60) days of the completion of the land-disturbing activity, as indicated by the issuance of a certificate of completion pursuant to section 10-~~1720~~ of this chapter, such cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated as the case may be.

~~(d)(c)~~ These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

(d) ~~The above provisions notwithstanding, when a~~ No permit shall be issued which would authorize any land-disturbing activity for any development which requires site plan or subdivision plan review ~~prior to the approval of the site or subdivision plan.~~ is proposed or planned on a property, no permit shall be issued which shall authorize any land-disturbing activity in advance of the approval of a site development plan under the procedures established by chapter 24.1 (zoning ordinance) of this Code or in advance of the approval of construction plans for any subdivision under the terms of the subdivision ordinance except upon the approval of the county administrator where it is determined after initial reviews of the development proposal that the only ~~outstanding unresolved~~ issues preventing site plan or subdivision plan approval are those which will not affect the location and extent of structures, parking areas or roads, or in accordance with subsection 10-17(f) below of this chapter.

(e) No permit shall be issued which would authorize any land-disturbing activity within any area included within a recorded or proposed landscape preservation or similar easement, unless the land-disturbing activity is deemed necessary by the county administrator for the construction, installation or maintenance of storm drainage facilities ~~dedicated to the county or the Commonwealth of Virginia,~~ or utilities operated and maintained by the county.

(f) Where a commercial or industrial site in excess of five (5) acres is proposed to be developed to accommodate multiple lots and/or buildings under separate ownership or control, the county administrator may, notwithstanding the provisions of subsection (d) above, authorize a land-disturbing activity in advance of approval of site plans for the individual commercial or industrial establishments upon demonstration by the property owner, to the satisfaction of the county administrator, that the topographic relief of the property will require extensive cut, fill and grading to prepare the site for multiple lot or building development and that such site preparation prior to plan approval is necessary and consistent with the objectives and policies of the county.

The following conditions shall be required by the county administrator in conjunction with such an authorization and shall be satisfied prior to issuance of any land-disturbing activity permits:

(1) A plan of development for the roads, drainage facilities and main-line utilities that will serve the proposed development and its multiple building sites shall be prepared, submitted and approved in accordance with all applicable site plan or subdivision development plan requirements.

- (2) All work shall be performed in strict accordance with an approved erosion and sediment control ~~clearing and grading~~ plan that has been prepared and approved in accordance with all applicable standards. ~~as specified in section 10-14 herein.~~
- (3) The construction of all streets, main-line utilities, drainage improvements, erosion control measures and similar infrastructure, both public and private, ~~and~~ as shown on the approved site plan or subdivision development plan, shall be guaranteed for construction by an agreement and secured by a letter of credit or cash escrow in an amount approved by the county administrator and county attorney. The agreement shall require that said construction shall commence within one year of the initial date of authorization of the land-disturbing activity and shall be in accordance with properly submitted and approved plans.
- (4) Reforestation of the property, or portions thereof as deemed appropriate by the county administrator, with approximately the same numbers and species of trees as were located on the property prior to clearing shall be guaranteed by an agreement and secured by a letter of credit or cash escrow in an amount approved by the county administrator and in such form as may be approved by the county attorney. Said reforestation shall be required unless a certificate of occupancy for at least one (1) commercial or industrial establishment is issued within three (3) years of the initial date of authorization of the land-disturbing activity.
- (5) No clearing shall be permitted within fifty feet (50') of any property line, except to permit the construction of approved infrastructure improvements, nor within any other portion of the site determined by the county administrator to be nonessential to preparation of the site for development.
- (6) The county administrator shall require the submission of any additional plans, plats, certifications or supporting materials deemed to be necessary and appropriate to apply and enforce this subsection.

Sec. 10-18Sec. 10-15. Term of permit.

- (a) A permit issued under this article shall be valid for a period of one (1) year; provided, however, it may be extended for an additional one-year period, by written approval of the county administrator, upon receipt of evidence of reasonable progress toward completion of the approved project and compliance with all conditions of approval.
- ~~(b) If a permit is not issued within one hundred eighty (180) days of the date of plan approval, then the county administrator shall, before responding to a request to issue a permit, evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the county administrator~~

~~finds the previously approved plan to be inadequate, a modified plan shall be submitted and approved prior to issuing any permits for the project.~~

- (eb) If land disturbing activities cease for more than one hundred-eighty (180) days, or if the permittee fails to initiate land disturbing activities within one hundred-eighty (180) days, of the date of issuance of a land disturbing activity permit, then the land disturbing activity permit and plan shall become void.

~~Sec. 10-19~~**Sec. 10-16. Periodic inspections of land-disturbing activities****Monitoring, reports, inspections, stop work orders and revocation of permits.**

~~The county administrator shall make periodic inspections of land-disturbing activities and may require monitoring and reports from the person responsible for carrying out the plan in order to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-disturbing activity. An inspection shall be made during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance sureties. The right of inspection shall be inherent in the issuance of a permit under this chapter. The owner, occupier or operator will be notified prior to any inspections and shall be given an opportunity to accompany the county administrator during such inspections.~~

- (a) ~~The county may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of all inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.~~
- (b) ~~The county administrator shall periodically inspect the land-disturbing activity to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. Unless the county establishes and follows an alternative inspection program approved by the Virginia Soil and Water Conservation Board, inspections shall be provided during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.~~

~~If the county administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.~~

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

- (c) Upon determination of a violation of this ordinance, the county administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan or an approved agreement in lieu of a plan, the county administrator may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

The order shall be served in the same manner set out in subsection (b), above, for a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court for the county.

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the county administrator may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the county.

The owner may appeal the issuance of an order to the circuit court for the county.

Any person violating or failing, neglecting or refusing to obey an order issued by the county administrator may be compelled in a proceeding instituted in the circuit court for the county to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

Nothing in this section shall prevent the county administrator from taking any other action authorized by this ordinance.

- (d) Revoked land-disturbing activity permits shall be reinstated only after the permittee has complied with the provisions specified in the notice to comply, and only after the permittee has implemented and maintained proper erosion and sediment control measures in accordance with the approved plans and/or in accordance with the directions provided by the county administrator, and only if the permittee has complied with all of the terms and conditions under which the original land-disturbing activity permit was issued. In addition, the permittee must apply for reinstatement of the revoked land-disturbing activity permit. An inspection and review fee shall accompany the permittee's written request for the reinstatement of the revoked land-disturbing activity permit. The reinstatement inspection and review fee shall be equivalent to the original land-disturbing activity permit inspection and review fee. Furthermore, if the county has drawn upon the permittee's land-disturbing activity performance surety funds, and the county has expended all or a portion of the permittee's surety funds in an effort to correct the erosion and sediment control violations, then the permittee shall be required to provide an additional surety equivalent to the expended portion of the original surety funds.

~~Sec. 10-20~~Sec. 10-17. Report, final inspection and eCertificate of completion of land-disturbing activity.

~~The following provisions shall apply to all projects requiring a land-disturbing activity permit, except single family, detached residences:~~

- (a) ~~Upon completion of a land-disturbing activity in accordance with the approved plan and adequate stabilization of all areas disturbed during the land-disturbing activity, the person to whom the permit was issued under this chapter shall file with the county administrator a final report consisting of:~~
- (1) ~~An "as built" plan prepared by a registered professional engineer or certified land surveyor. The "as built" plan shall include but shall not be limited to:~~
 - ~~a. Rim and invert elevations of all storm drainage inlets and manholes for both on-site and off-site improvements.~~
 - ~~b. Invert elevations for all culverts including driveway culverts.~~
 - ~~c. Length, size, material type and slope of all storm drainage pipes, cross culverts and driveway culverts.~~
 - ~~d. Top of curb elevations for curb and gutter street sections or parking areas at high points, low points, grade changes where the algebraic difference in grades is greater than or equal to one percent (1%), and at points of curvature or tangency through horizontal curves, including street intersection radii.~~

- e. ~~Invert elevations at 100-foot intervals along open channels and roadside ditches.~~
 - f. ~~Bottom width, side slopes and material type for open channels and roadside ditches.~~
 - g. ~~Stormwater management facility horizontal and vertical location, including all associated structures and boundaries such as toe of slopes, top of banks, and centerline of embankment.~~
 - h. ~~Other information as deemed necessary by the county administrator in order to determine the general conformance of the completed project with the approved plan.~~
- (2) ~~A certification, prepared by a registered professional engineer or a certified land surveyor, attesting that all grading, and storm drainage facilities, including off-site facilities, have been completed in general conformance with the approved plan. The certification may be based on a visual observation of the project by the registered professional engineer or certified land surveyor in conjunction with the "as-built" plan as required by the above subsection.~~
- (b) ~~Upon receipt of the final report referred to in subsection (a) above, completion of the land-disturbing activity in accordance with the approved plan, the county administrator shall make a final inspection of the project. Upon finding satisfactory evidence of compliance with the approved plan, the county administrator shall issue a certificate of completion.~~

Sec. 10-21. ~~Single-family detached residences.~~

- (a) ~~Single-family detached residential construction that will result in the disturbance of two thousand five hundred (2,500) square feet or more of land shall comply with the standard erosion control plans and requirements for single-family detached residential construction as may be developed by the county administrator. Any requests for significant deviation from and/or amendment to the standard erosion control plans and requirements for single-family detached construction as may be developed by the county administrator shall require compliance with the terms of section 10-14 of this chapter.~~
- (b) ~~No permit for land-disturbing activities associated with the preparation of a single-family detached residence shall be issued until the applicant has executed a performance agreement agreeing to comply with the approved erosion control plan.~~
- (c) ~~Building permits for any single-family detached residential construction required to obtain a land-disturbing activity permit under the provisions of this chapter shall not be issued until the county administrator has conducted an initial erosion and sediment control inspection of the project, found such project to be in compliance with the objectives of the approved erosion and sediment control plan, determined that all~~

~~necessary erosion and sediment control measures have been installed properly, and issued an initial erosion and sediment control inspection approval notice.~~

- ~~(d) — Upon completion of a land-disturbing activity in accordance with the approved plan and adequate stabilization of all areas disturbed by the land-disturbing activity, the person to whom the permit was issued under this chapter shall request a final erosion and sediment control inspection of the project by the county administrator. Upon finding satisfactory evidence of compliance with the approved plan and adequate stabilization of all areas disturbed by the land-disturbing activity, the county administrator shall issue a certificate of completion.~~
- ~~(e) — The construction of permanent roads or driveways that disturb in excess of two thousand five hundred (2,500) square feet and that serve one (1) or more single-family detached residences shall comply with the requirements of this chapter.~~

Secs. 10-~~22~~18—10-25. Reserved.

ARTICLE III. VIOLATIONS, PENALTIES AND APPEALS

Sec. 10-26. Violations of chapter—Generally.

- (a) Any person who engages in or causes any regulated land-disturbing activity, without first receiving approval for such activity as prescribed by this chapter, shall be in violation of this chapter.
- (b) Any person who violates ~~or causes to be violated~~ any condition ~~of approval~~ of any authorized land-disturbing activity or exceeds the scope of approval of any authorized activity or who fails to comply with any other provision of this chapter shall be in violation of this chapter.

~~Sec. 10-27. Notice of violation.~~

- ~~(a) — The county administrator, upon determination of a violation of this chapter, shall immediately serve upon the landowner, person or permittee, by registered mail, certified mail, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities, a notice to comply. Such notice shall set forth the conditions of noncompliance and shall specify the time within which measures of compliance must be completed. Failure to comply with such notice shall be a violation of this chapter and may also be reason for revocation of a permit, if issued.~~
- ~~(b) — If the county administrator determines that there is a failure to comply with an approved plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-~~

~~disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply with the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by section 10-28.~~

- ~~(c) — Upon receipt of a sworn complaint of a substantial violation of this chapter, the county administrator may, in conjunction with or subsequent to a notice to comply as specified in subsection (a) above, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, such an order may be issued whether or not the alleged violator has failed to comply with a notice to comply. The order shall be served in the same manner as a notice to comply and shall remain in effect for seven (7) days from the date of service pending application by the county administrator or alleged violator for appropriate relief to the circuit court for the county. Upon completion of corrective action, the order shall immediately be lifted.~~
- ~~(d) — Nothing in this section shall prevent the county administrator from or be a prerequisite to the county administrator taking any other action specified in section 10-28 or otherwise authorized by law.~~
- ~~(e) — Revoked land disturbing activity permits shall be reinstated only after the permittee has complied with the provisions specified in the notice to comply, and only after the permittee has implemented and maintained proper erosion and sediment control measures in accordance with the approved plans and/or in accordance with the directions provided by the county administrator, and only if the permittee has complied with all of the terms and conditions under which the original land disturbing activity permit was issued. In addition, the permittee must apply for reinstatement of the revoked land disturbing activity permit. An inspection and review fee shall accompany the permittee's written request for the reinstatement of the revoked land disturbing activity permit. The reinstatement inspection and review fee shall be equivalent to the original land disturbing activity permit inspection and review fee. Furthermore, if the county has drawn upon the permittee's land disturbing activity performance surety funds, and the county has expended all or a portion of the permittee's surety funds in an effort to correct the erosion and sediment control violations, then the permittee shall be required to provide an additional surety equivalent to the expended portion of the original surety funds.~~

Sec. 10-28Sec. 10-27. Penalties, injunctions and other legal actions.

- ~~(a) — A violation of the conditions of this chapter shall be deemed a misdemeanor subject to a fine not exceeding one thousand dollars (\$1,000.00) or thirty (30) days imprisonment, or both, for each violation.~~

- ~~(b) — The county administrator may apply to the circuit court for the county for injunctive relief to enjoin a violation or a threatened violation of the terms of this chapter, without the necessity of showing that there does not exist an adequate remedy at law.~~
- ~~(c) — In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the county in a civil action for damages.~~
- ~~(d) — Without limiting the remedies that may be obtained in this chapter, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000) for each violation.~~
- ~~(e) — With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the county administrator or any condition of a permit or any provision of this article, the county administrator may provide in an order for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under subsection (d).~~
- (a) — Any person who violates any provision of this chapter shall, upon a finding of the district court of the county, be assessed a civil penalty. The civil penalty for any one violation shall be \$100.00, except that the civil penalty for commencement of land-disturbing activities without an approved plan or an approved agreement in lieu of a plan shall be \$1000.00. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan or an approved agreement in lieu of a plan for any site shall not result in civil penalties which exceed a total of \$10,000.
- (b) — The county administrator, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the circuit court of the county to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the ordinance, and the county administrator, that a violation of the ordinance has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the ordinance nor the county administrator has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.
- (c) — Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other

remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the county.

Any civil penalties assessed by a court shall be paid into the treasury of the county, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

- (d) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this chapter, the county may provide for the payment of civil charges for violations in specific sums, not to exceed \$2,000. The county administrator shall establish a schedule enumerating the violations and the associated civil charges. Such civil charges shall be instead of any appropriate civil penalty.
- (e) The Commonwealth's County Attorney shall, upon request of the County, take legal action to enforce the provisions of this ordinance.
- (f) Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.
- (g) Nothing herein shall prevent the County Administrator from or be a prerequisite to the County Administrator taking any other action allowed by law or equity to remedy noncompliance with this Chapter.

Sec. 10-29

Sec. 10-28. Appeals from decisions under chapter and judicial review.

- (a) Any person or persons jointly or severally aggrieved by any written final act or decision of the county administrator in carrying out the terms of this chapter may appeal such act or decision to the circuit court of the county, provided such appeal is filed within thirty (30) days from the date of the written final act adversely affecting the rights, duties or privileges of the person making such appeal.
- (b) A property owner who disturbs two thousand five hundred (2,500) square feet, or more, of land and claims that the activity is exempted from the requirements of this chapter shall have one (1) year from the date of commencement of the activity to demonstrate to the county administrator that the activity is exempt. As soon as a nonexempt status is determined, the requirements of this chapter shall be immediately enforced.

Final decisions of the county under this ordinance shall be subject to review by the circuit court of the county, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

